

No. 9/5/84-6 Lab/3645.—In pursuance of the provisions of section 17 of Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s (i) State Transport Controller, Haryana, Chandigarh (ii) General Manager, Haryana Roadways, Sirsa.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 102 of 1984

between

SHRI ASH RAM, WORKMAN AND THE MANAGEMENT OF (i) STATE TRANSPORT CONTROLLER, HARYANA, CHANDIGARH (ii) GENERAL MANAGER, HARYANA ROADWAYS, SIRSA.

Shri V.K. Bansal, A.R. for the workman.

Shri V.K. Kohli, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Ash Ram and the management of (i) State Transport Controller, Haryana, Chandigarh, (ii) General Manager, Haryana Roadways, Sirsa, to this Court, for adjudication.—vide Labour Department Gazette Notification No. 22340—45, dated 21st June, 1984 :

Whether the termination of services of Shri Ash Ram is justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was appointed as Conductor vide order dated 11th January, 1982 and actually joined his duties on 16th January, 1982 and that the respondent choose to terminate his services unlawfully with effect from 12th October, 1982 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947, though he had put in more than 340 days of actual work with the respondent. So, there is a prayer for reinstatement with continuity of service and full back wages.

3. A reply has been filed by the respondent, in which it was admitted that the workman was employed on 16th January, 1982 but it is alleged that his services were discontinued with effect from 4th May, 1982 and he was re-appointed on 5th June, 1982 with effect from 3rd June, 1982 and was again sacked with effect from 12th October, 1982 his services being no longer required and so it is alleged that the workman has not completed 240 days of actual work with the respondent.

4. On the pleadings of the parties, the following issues were settled for decision by me on 31st October, 1984:

1. Whether the termination of services of Shri Ash Ram is justified and in order ? If not, to what relief is he entitled ?

5. The workman appeared as his own witness as WW 1 and the management examined MW-1 Shri Shyam Vadhwa, clerk, Haryana Roadways, Sirsa Depot. The learned Authorised Representatives of the parties heard.

6. It is admitted case of the parties that the workman was initially employed vide appointment order dated 11th January, 1982, though he actually joined his duties on 16th January, 1982, but it is the case of the respondent that there was a gap in service of the workman from 4th May, 1982 to 3rd June, 1982, on which date he was re-employed. Interestingly the 2nd order of appointment was passed on 5th June, 1982 and was made operative with effect from 3rd June, 1982. This order dated 5th June, 1982 cannot be taken to be an order of re-appointment of the workman but the break in was given just to divest the workman of his right of re-employment under the Industrial Disputes Act, 1947. During the course of arguments, the learned Authorised Representative of the respondent admitted that no holidays are given to the conductors of the respondent roadways and that conductors are given rest leave only and that no evidence has been adduced by the respondent that any rest leave was availed of by the workman. So, I shall presume that the workman actually worked with the respondent from 16th January, 1982 to 12th October, 1982 and that the number of actual working days put in by him with the respondent after taking into account the break in service, would be 245 days, well above the Statutory working days required under the Industrial Disputes Act, 1947. Even otherwise the break in service given from 4th May, 1982 to 3rd June, 1982 was an unfair labour practice on the part of the respondent. It

is difficult to believe that the services of the workman were not required on 4th May, 1982 and they were urgently needed with effect from 3rd June, 1982. So, viewed from any angle the workman had actually put in more than 240 days and that the respondent was not justified in terminating his services without complying with the provisions of section 25 F of the Industrial Disputes Act, 1947, which was never done and as such the order of termination is illegal and void abinitio and as such the same is set aside.

7. On the question of back wages, the learned Authorised Representative of the respondent offered slight resistance through opposition was uncalled for because normal rule is to award full wages when an order of termination is displaced by the court except for cogent reasons and under exceptional circumstances which in this case are not present. On behalf of the workman a catena of authorities were cited on the point of back wages and these were 1981(I) SLR 606, Karnail Singh V/s State of Punjab and others, 1981 (II) SLR 267, Ramesh Chandra Singh V/s Union of India and 1981 (II) SLR 445, Pepsu Road Transport Corporation, Patiala V/s Presiding Officer, Labour Court Patiala. So the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

The 9th April, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

Endorsement No. 102/84/655, dated 26th April, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

No. 9/5/84-6Lab/3647.—In pursuance of the provisions of section 17 of Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. (i) The Haryana Dairy Development Co-operative Federation Limited, S.C.O., 127-28, Sector 17-C, Chandigarh (ii) The Haryana Dairy Development Co-operative Federation Limited, Milk Plant, Bhiwani.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 101 of 1983
between

SHRI SHYAM SUNDER, WORKMAN AND THE MANAGEMENT OF (i) THE HARYANA DAIRY DEVELOPMENT CO-OPERATIVE FEDERATION LTD., S.C.O. 127-28, SECTOR 17-C, CHANDIGARH. (ii) THE HARYANA DAIRY DEVELOPMENT CO-OPERATIVE FEDERATION LIMITED, MILK PLANT, BHIWANI.

Present.—

Shri S.S. Gupta A.R. for the workman.

Shri C. P. Sharma, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Shyam Sunder and the management of (i) The Haryana Dairy Development Co-operative Federation Ltd., S.C.O. 127-28, Sector 17-C, Chandigarh. (ii) The Haryana Dairy Development Co-operative Federation Limited, Milk Plant, Bhiwani to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/31026—32, dated 30th June, 1983 :—

Whether the termination of service of Shri Shyam Sunder was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent as a Dairyman since 27th March, 1980 and that the respondent choose to terminate his services unlawfully on 1st August, 1982 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947. So, there is a prayer for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent the preliminary objections taken are that the claim is vague and the petitioner has no right to file the same. Another plea taken is that the respondent plant is running into losses and as such, controlling authority of the respondent has chosen to order for closure of the plant. On merits, it is alleged that the petitioner was appointed on *ad hoc* basis for a period of three months and was granted extension in employment for the same period from time to time with breaks of long intervals and so, his termination was not illegal or unjustified.

4. On the pleadings of the parties, the following issue was laid down for decision by me on 16th September, 1984:—

Whether the termination of service of Shri Shyam Sundar was justified and in order? If not, to what relief is he entitled?

5. The management examined MW-1 Shri N.K. Sharma, officiating General Manager of the respondent and the workman appeared as his own witness as WW-1.

6. The learned Authorised Representatives of the parties heard and documents perused.

7. It is a common case of the parties that the work and conduct of the workman during the course of his employment has been satisfactory, because no disciplinary action was ever mooted or taken against the workman. On behalf of the management a faint plea was raised that since the appointment of the workman was on *ad hoc* basis, at one time for a period of three months, the workman cannot claim the right of reinstatement, because his services were terminated as being no longer required after the last extension of service granted to him. The plea is not plausible, because extension of service in dribblets is an unfair labour practice and the Court cannot put its seal of approval to the same. The workman had actually worked for more than 240 days with the respondent, because he was employed in the beginning of April, 1980 and his services were dispensed with on 1st August, 1982. So, the provisions of section 25F are fully attracted in the present case and so the order of relieving him from duty Exhibit MW-1/8 cannot be sustained and as such the same is set aside.

8. Granting relief in this case has posed a problem for the Court. Because on behalf the management it was forcefully contended that the respondent unit has gone sick and there is virtual closure of the same by order of the Managing Director, copy of which is Exhibit MW-1/9.—*vide* this letter the management of respondent at Bhiwani plant has been directed to divert the milk supply to the Jind Plant. The learned Authorised Representative for the workman forcefully contended that many Milk Plants are functioning in the State of Haryana under the overhaul control of the Managing Director, Haryana Dairy Development Co-operative Federation Ltd., Chandigarh and so the post held by the workman is a transferable one and as such, even if it is believed, that the respondent unit at Bhiwani has gone sick, the workman can be transferred to any other plant located in the State of Haryana. The plea is tenable, because other employees of the respondent plant at Bhiwani has been transferred to other Milk Plants in the State of Haryana. The same can be done in the case of the present workman also, in case, he is reinstated. So, the plea of the management that in case, the order of termination is held to be unlawful, reinstatement of the workman cannot be ordered is not tenable. Accordingly the workman is ordered to be reinstated with continuity of service and 50% of back wages. I was inclined to award full wages to the workman but this Court cannot be oblivious of the fact that most of the Milk Plants in the State of Haryana are in doldrums and they are proving to be a drag on the State exchequer. The reference is answered and returned accordingly. There is no order as to cost.

Dated : 15th April, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bhiwani.

Endorsement No. 101/83/657, dated 26th April, 1985.

Forwarded (four copies) to the Secretary of Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bhiwani.